

Court No. 29

Case :- SPECIAL APPEAL No. - 146 of 2021

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A.F.R.

Reserved

Appellant :- State Of U.P. Through Principal Secretary And 4 Others

Respondent :- Mahanand Pandey And Another Counsel for Appellant :- Subhash Rathi Counsel for Respondent :- Vinod Kumar Mishra

Hon'ble Munishwar Nath Bhandari, Acting Chief Justice Hon'ble Piyush Agrawal, J.

(As per : Hon'ble Munishwar Nath Bhandari, A.C.J.)

The State has preferred this appeal to challenge the judgment dated 16.03.2021 passed by learned Single Judge whereby the writ petition to seek full pension and gratuity apart from other retiral benefit was allowed.

The non-appellant/petitioner was appointed on the post of Constable on 27.12.1979. He was promoted to higher posts from time to time and thereupon retired on attaining the age of superannuation on 31.03.2020. Prior to retirement, an FIR was lodged against him for offence under Sections 307, 332, 353, 427 Indian Penal Code and Section 5 of Explosive Act. Apart from the aforesaid, a complaint was also registered by one Umesh Chand Mishra alleging commission of offence under Section 302 Indian Penal Code apart from other offences and thereby, another FIR was registered with investigation by CBCID. The charge-sheets in the cases were filed by the police, however, after the trial, non-appellant/petitioner was acquitted in both the cases. The State Government preferred an appeal against the order of acquittal and was registered bearing no. 3374 of 2013. The State appeal was admitted by this Court on 24.10.2013.

The department did not initiate departmental proceedings in reference to the commission of crime but non-appellant/petitioner was placed under suspension by the order dated 24.07.1996. The suspension was withdrawn on 26.12.1996.

The non-appellant/petitioner having retired on 31.03.2020, filed a writ petition to seek full pension and other retiral benefits when several

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representations sent by him could not get favourable result. The claim of full pension and other retiral benefit was not only in reference to rule but on the ground of parity because other co-employees were extended benefit of full pension despite pendency of the State appeal against the order of acquittal in their cases also. Learned Single Judge allowed the petition with a direction to the respondents to extend benefit of all retiral benefits within six weeks otherwise to extend benefit of 12% interest on delayed payment.

Learned Standing Counsel submits that as per Civil Service Regulations Relating to Pension to State Employees, one was made entitled to provisional pension if any departmental or judicial proceedings or enquiry by the Administrative Tribunal is pending. Learned Single Judge ignored Regulation 351-AA while allowing the writ petition. Pendency of the appeal against the order of acquittal is judicial proceeding. In view of the above, judgment of learned Single Judge is in ignorance of the Regulations as well as judgment by this Court. The prayer is, accordingly, to set aside the judgment of learned Single Judge and allow the appeal.

Per contra, learned counsel for the respondents submits that pendency of the criminal appeal does not fall in the definition of "judicial proceeding". Learned Single Judge thus, allowed the writ petition by referring to the judgment of this Court wherein it was held that pendency of the criminal appeal should not be a bar to grant of retiral benefits. The prayer is, accordingly, to dismiss the appeal.

We have considered the rival submissions of the parties and perused the record.

It is a case where non-appellant/petitioner was made entitled to the provisional pension during pendency of the appeal against the order of acquittal. The facts disclosed earlier show two FIRs against the non-appellant/petitioner but after the trial, he was acquitted. The State Government preferred a criminal appeal and is pending in the Court.

The only question before us is as to whether pending criminal appeal would fall in the definition of "judicial proceeding" so as to attract

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Regulations 351-AA and 919-A(3). For ready reference, both the provisions are quoted hereunder :

"351-AA. In the case of a Government Servant who retires on attaining the age of superannuation or otherwise and against whom any departmental or Judicial proceedings or any enquiry by Administrative Tribunal is pending on the date of retirement or is to be instituted after retirement a provisional pension as provided in Article 919-A may be sanctioned.

919-A(3). No death-cum-retirement gratuity shall be paid to the Government servant until the conclusion of the departmental proceedings or the enquiry by the Administrative Tribunal and issue of final orders thereon."

Regulation 351-AA allows provisional pension to a Government servant against whom departmental or judicial proceeding or any enquiry by Administrative Tribunal is pending on the date of retirement or instituted after the retirement.

The facts on record show pendency of the criminal appeal against the non-appellant/petitioner. It is to challenge the judgment of the trial Court acquitting the non-appellant/petitioner. The issue

aforesaid has not been decided by this Court in any of the judgment referred by learned Single Judge.

In the case of Amrit Lal Versus Chief Election Officer and others reported in 2014 SCC OnLine All 12502, the issue as to whether criminal appeal would fall in the definition of “judicial proceeding” has not been answered. In the said case, a challenge was made to the order denying benefit of gratuity due to pendency of the criminal appeal. The Court found that the appeal was dismissed on 17.05.2012. In view of the above, no justification was found to withhold benefit of gratuity. The judgment, however, makes an observation that pending criminal appeal cannot be a valid ground for non-payment of gratuity, more so after dismissal of the appeal. The judgment aforesaid does not address the issue whether criminal

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appeal falls in the definition of “judicial proceeding”. An observation about the entitlement of the gratuity without consideration of issue cannot be said to be a judgment on the legal issue framed herein.

In the case of Rajeev Sharma Versus State of U.P. and others reported in 2014 SCC OnLine All 12969, the Division Bench relied on the judgment in the case of Amrit Lal (supra) where the issue involved herein was not decided. The Division Bench in the case of Rajeev Sharma (supra) has made a reference of the judgment of this Court in the case of State of U.P. and others Versus Jai Prakash reported in 2013 SCC OnLine All 14150 also. The relevant paragraph of the judgment in the case of Rajeev Sharma (supra) is quoted hereunder :

“Civil Service Regulation is applicable upon the employees of the power corporation regulation 351-AA and regulation 919-A(3), prohibits payment of death-cum-retirement gratuity until the conclusion of departmental or judicial proceeding. Division Bench in Jai Prakash (Supra) has held “judicial proceedings” would necessarily include pendency of criminal case. The question to be answered is as to whether pendency of criminal appeal, against acquittal, will include “pending judicial proceeding”. In Amrit Lal (Supra), Division Bench observed pendency of criminal appeal against acquittal is not a ground for withholding the retiral dues. After acquittal there is nothing against the employee, more so, in the facts of the case, the respondents did not choose to initiate any disciplinary proceedings after acquittal nor did they examine the judgment of the trial court to find out, as to whether petitioner was acquitted ‘honourably’, once failing to exercise their powers under the rule to initiate any proceedings, it is not open for the respondents to withhold retiral dues, merely on pendency of criminal appeal.”

The judgment supra gives a reference of the judgment in the case of Jai Prakash (supra) to hold a criminal appeal to fall in the definition of “judicial proceeding”. A careful reading of the judgment in the case of Jai

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Prakash (supra) does not show a finding on it though it was held that during pendency of the departmental or judicial proceeding, one would be entitled to the provisional pension only. In view of the aforesaid, we need to decide the issue directly involved in this case.

The word "judicial proceeding" used under Regulation 351-AA would include every proceeding pending in the Court whether original or at the appellate stage. The judicial proceeding means proceeding over which Judge presides. A criminal appeal cannot be taken out from the definition of "judicial proceeding" and thereby, if one is acquitted but appeal thereupon is pending, he/she would be governed by Regulation 351-AA and thereby, entitled to the provisional pension.

The interpretation of word "judicial proceeding" otherwise came for consideration before the Apex Court in the case of Subhash Chandra Versus S.M. Agarwal reported in 1984 Criminal Law Journal 481. Paragraph 7 of the said judgment is quoted hereunder for ready reference :

"Bawa Gurcharan Singh, learned counsel for the petitioner, also invited our attention to Section 2(C)(ii) of Contempts of Courts Act wherein a publication which prejudices or interferes or tends to interfere with, the due course of any judicial proceedings, has been defined as criminal contempt. His contention that by using the words 'judicial proceeding' the Legislature has done away with the distinction between trial and appeal and has in its wisdom chosen to use the words 'judicial proceedings' which are wider in sweep and which we (by) fair construction would mean even the appeal which is a continuation of the trial, to our mind appears to be well founded. It would thus be seen that respondent no. 1 went to the media to give interview in respect of a case which was pending trial before this court and the contents of the interview would show that it had not only a tendency and capacity to cause prejudice but it did make it difficult for the court to deal with the case in the manner which law and justice would require of it."

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The judgment aforesaid covers the issue involved herein. In view of the discussion made above and the finding recorded by us, pending criminal appeal would fall in the definition of "judicial proceeding" and thereby, Regulation 351-AA read with Regulation 919-A(3) would be applicable. The non-appellant would be entitled to the provisional pension. As per Regulation 919, the provisional pension now is the full pension though one would not be entitled to the gratuity till disposal of the appeal. The non-appellant/petitioner can, accordingly, pursue pending criminal appeal against him.

In view of the finding recorded above, the case of parity cannot be accepted de hors the rules. It is otherwise to record that other co-employees were extended benefit of pension and gratuity in absence of the information about the pending criminal appeal against them. The appellant should have been careful in taking decision but finding it to be bonafide in reference to other co-employees facing criminal appeal, the claim of parity cannot be accepted. It is otherwise settled law that before making claim for parity pursuant to Article 14 of the Constitution of India, one has to make out a legal right for grant of benefit. We have already held that pending criminal appeal falls in the definition of "judicial proceeding" thus, one would be governed by Regulation 351-AA. If the direction is given to allow the benefit of pension and gratuity pending criminal appeal, it would be de hors the regulation.

Accordingly, we find reason to cause interference in the judgment of learned Single Judge. The direction for payment of all retiral benefits with interest on delayed payment is set aside. The non-

appellant/petitioner, however, be entitled to provisional pension which would be the full pension as per Regulation 919-A(3).

With the aforesaid, the appeal is allowed.

Order Date :- 14.7.2021 Shubham

(Piyush Agrawal, J.)

(Munishwar Nath Bhandari, A.C.J.)